IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re UPSTART HOLDINGS, INC. DERIVATIVE LITIGATION	Case No. 2:22-cv-02961-ALM-EPD **DEMAND FOR JURY TRIAL**

CONSOLIDATED AMENDED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiffs William OConnor and Kimberly Chung (collectively, the "Plaintiffs"), by and through their undersigned attorneys, bring this consolidated amended derivative complaint for the benefit of nominal defendant Upstart Holdings, Inc. ("Upstart" or the "Company"), against its Board of Directors (the "Board") and certain of its executive officers seeking to remedy the Individual Defendants'[1] breaches of fiduciary duties and violations of federal law. Plaintiffs allege the following based upon personal knowledge as to themselves and their own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiffs' attorneys, which included, among other things, a review of: (a) documents produced by Upstart pursuant to the Order Granting the Parties' Motion to Consolidate Cases, Appoint Co-Lead Counsel, and Stay the Consolidated Action entered in this case on December 12, 2022 (ECF No. 23) (the "Stipulation of Stay"); (b) public filings made by Upstart with the United States Securities and Exchange Commission ("SEC"); (c) publicly available documents concerning Upstart, transcripts of conference calls with analysts, and

[1] The Individual Defendants are Jeff Huber ("Huber"), Kerry Cooper ("Cooper"), Sukhinder Singh Cassidy ("Cassidy"), Hilliard Terry ("Terry"), Mary Hentges ("Hentges"), Ciaran O'Kelly ("O'Kelly"), Dave Girouard ("Girouard"), Paul Gu ("Gu"), Sanjay Datta ("Datta"), Robert Schwartz ("Schwartz") and Anna Counselman ("Counselman") (collectively with the Company, "Defendants").

announcements concerning the Company; (d) press releases issued by, and regarding, Upstart; (e) legal filings, news reports, and securities analysts' reports about the Company; (f) filings in various proceedings, including a federal securities class action captioned *In re Upstart Holdings, Inc. Sec. Litig.*, No. 2:22-cv-02935-ALM-EPD (S.D. Ohio) (the "Securities Class Action"); and (g) other publicly available information concerning Upstart.

NATURE OF THE ACTION

1. This is a shareholder derivative action brought on behalf of Upstart against certain officers and members of the Company's Board for breaches of their fiduciary duties to the Company and its shareholders from at least December 16, 2020 to November 8, 2022 (the "Relevant Period"), as set forth below.

2. Upstart, founded in 2012, is a financial technology company that uses artificial intelligence ("AI") to underwrite personal loans predominantly to borrowers whose limited or poor credit history generally precludes them from obtaining loans from more traditional sources.

3. The Company's platform aggregates consumer demand for high-quality loans and connects it to a network of Upstart's AI-enabled bank partners. Upstart claims that its underwriting process enables banking partners to originate loans with higher approval rates and lower loss rates than traditional underwriting processes, while consumers purportedly benefit from higher approval rates and lower interest rates.

4. The Company's fee-based business model is predicated on moving large volumes of loans through its platform and then placing the loans the Company underwrites with banks or institutional credit investors, thereby keeping loans off its balance sheet and largely insulating itself from credit risk.

5. As alleged herein, during the Relevant Period the Individual Defendants repeatedly

stated that Upstart's AI-based models could underwrite loans in a way that was superior to traditional underwriting processes and lead to the origination of less risky credit. Upstart touted the predictive capabilities of its AI technology, which would purportedly allow it to handle a recession "far better than a traditional system would." The Company also represented that it would fund a limited amount of loans from its balance sheet only to support the research and development of new loan products, and that it would maintain limited exposure to credit risk.

6. These and similar statements were materially false and misleading. In reality, the Company's AI-based underwriting model was unable to adequately account for changing macroeconomic conditions, such as rising interest rates, inflation, and changes from government stimulus programs related to the Covid-19 pandemic. As a result, Upstart had been increasingly underwriting progressively less creditworthy loans, requiring the Company to fund a significant amount of loans from its balance sheet to support loan transaction volume and stabilize its business, thereby exposing Upstart to significant credit risk.

7. On December 9, 2020, Upstart filed its registration statement and prospectus (the "Registration Statement") with the SEC in connection with the Company's initial public offering ("IPO"). On December 16, 2020, Upstart completed its IPO, taking advantage of the thriving lending market created by the U.S. government's stimulus programs during the COVID-19 pandemic. Upstart completed a successful IPO, offering approximately nine million shares to the public at $20.00 per share.

8. The Individual Defendants' misrepresentations of the Company's business model, including the promises of loans with low credit risk and the unique position of the Company to withstand macroeconomic changes, were material to investors. As a result of the Individual Defendants' misrepresentations during the Relevant Period, detailed herein, Upstart securities

traded at artificially inflated prices. In the year following the IPO, Upstart's stock price skyrocketed, reaching a high of $401.49 on October 15, 2021.

9. However, the truth was revealed on May 9, 2022, when the Company announced its financial results for the first quarter of 2022. Upstart reported that it held approximately $604 million worth of loans, notes, residuals on its balance sheet, an amount significantly higher than previous periods and more than double the $261 million that it held at the end of the previous quarter. The Company acknowledged that the significant increase in the amount of loans retained on its balance sheet was the result of rising "default rates" on loans originated in the second half of 2021 as well as "rising interest rates and rising consumer delinquencies putting downward pressure on conversion." Further, Upstart revealed that, though the Company had historically used its balance sheet "almost exclusively" for the research and development of new loan products, in the first quarter of 2022, Upstart used its balance sheet as "a market-clearing mechanism" to support the Company's loan transaction volume and stabilize its business.

10. The Company also confirmed that it had recently "loosened" its loan modification policy to make it easier for Upstart borrowers to obtain forbearance of their loan payments. This had the effect of converting the status of "delinquent" loans to "current," and likely masked the true extent of delinquent Upstart loans. In response, Upstart cut its 2022 revenue guidance by $150 million and issued revenue guidance for the second quarter of 2022 that was well below analyst expectations. Despite Upstart's prior statements touting its ability to handle a recession "far better than a traditional system would," the Company attributed its weak outlook to "macro uncertainties" and "the prospect of a recession."

11. On this news, the Company's share price fell $43.52, or over 56%, from a closing price of $77.13 per share on May 9, 2022, to a closing price of $33.61 per share on May 10, 2022.

Additionally, the price of Upstart's Convertible Senior Notes declined by $13.37, or approximately 18.2%, based on a comparison of the last trade price on May 9, 2022 before the Company's disclosures and the last trade price on May 10, 2022.

12. Then, on July 7, 2022, the Company announced its preliminary unaudited financial results for the second quarter of 2022, revealing that its revenue was expected to be approximately $228 million, a significant decrease from the previously estimated $295 to $305 million. Defendant Girouard stated that:

> Our revenue was negatively impacted by two factors approximately equally. First, our marketplace is funding constrained, largely driven by concerns about the macroeconomy among lenders and capital market participants. Second, in Q2, we took action to convert loans on our balance sheet into cash, which, given the quickly increasing rate environment, negatively impacted our revenue.

13. On this news, the Company's stock price decreased $6.65 per share, or approximately 20%, to close at $27.09 per share on July 8, 2022.

14. The truth was fully revealed on November 8, 2022, when the Company announced its financial results for the third quarter of 2022, revealing that total revenue was $157 million, a decrease of 31% from the third quarter of 2021. Defendant Datta stated that Upstart-originated loans were experiencing 25% more losses than modeled, essentially admitting that the Company's AI model was not performing well in the same macroeconomic environment that the Company previously told investors that the model was designed to perform.

15. On this news, the Company's stock price dropped $1.98 per share, or approximately 10%, to close at $17.06 per share on November 9, 2022.

16. As a result of the foregoing, the Securities Class Action was filed against Upstart and Defendants Girouard, Datta, Gu, and Counselman.

17. On September 29, 2023 this Court denied the defendants' motion to dismiss in the

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